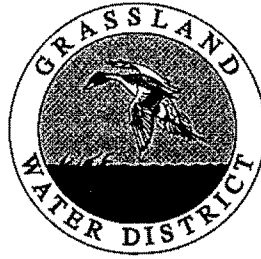


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February 24, 2012

The Honorable David Dreier
Chairman, House Committee on Rules
U.S. House of Representatives
H-312 Capitol
Washington, D.C. 20515

The Honorable Louise Slaughter
Ranking Member, House Committee on Rules
U.S. House of Representatives
H-312 Capitol
Washington, D.C. 20515

RE: Grassland Water District Objections to H.R. 1837 (Nunes)

Dear Chairman Dreier and Ranking Member Slaughter:

This letter is submitted on behalf of the Grassland Water District (GWD) and Grassland Resource Conservation District (GRCD) in regard to H.R. 1837 (as amended), the Sacramento-San Joaquin Valley Water Reliability Act. On June 27, 2011, GWD and GRCD submitted a letter to the Subcommittee on Water and Power addressing an earlier version of the bill (attached). Please include both letters in your Committee's official records for this proposed legislation.

1124-631j

As described in detail in our previous letter, GWD delivers water to state, federal, and private lands of the GRCD located within California's Merced County for the purpose of managing wildlife habitat in the largest wetland complex west of the Rocky Mountains. The 1992 Central Valley Project Improvement Act (CVPIA) mandates that the Bureau of Reclamation (Reclamation) provide sufficient water supplies to these refuge lands. Although H.R. 1837 has been characterized as a bill that would provide greater water supply reliability to Central Valley Project (CVP) contractors in the San Joaquin Valley, this is not entirely accurate. The desire of agricultural and urban CVP contractors to achieve greater water supply reliability in the San Joaquin Valley is equally shared by CVP refuge water supply contractors. Yet H.R. 1837 does nothing to address Reclamation's longstanding failure to satisfy its obligations to refuge contractors, and may make things worse.

Between 2006 and 2010, state, federal, and privately-owned wetlands of the GRCD received only 36% of their mandated spring/summer contractual supplies. These refuges rely almost exclusively on their CVP contractual supplies and are not able to supplement those supplies, unlike many other CVP water contractors. These other CVP contractors have received preferred access to carryover storage and rescheduled water, have frequent access to supplemental groundwater supplies, can acquire water on the private market to make up for shortages, and have enjoyed conveyance priority through the Delta, whereas the CVPIA requires the refuges to rely solely on Reclamation to directly deliver their contractual water supplies.

H.R. 1837 does not directly target the established two-tier system for refuge water supplies, identified as Level 2 and Level 4 in federal law and federal water contracts. While we appreciate the fact that H.R. 1837 and its sponsors appear to recognize that refuges share many of the same hydrologic challenges that agricultural and urban contractors face, we remain concerned about a number of significant indirect impacts that the bill will have on refuge water supplies. Listed below are some of GWD's and GRCD's specific concerns with the bill, which threatens to undermine the substantial accomplishments of the CVPIA's wildlife refuge water program:

1. H.R. 1837 would add a new subsection at the end of CVPIA Section 3406, stating that the CVPIA's fish and wildlife mitigation, protection, restoration, and enhancement purposes would be "met" so long as Reclamation "pursues" the activities described in Section 3406. This general language creates a potential conflict (or at least confusion) when compared to the very specific

mandates in Sections 3406(d)(1) and (d)(2) that require Reclamation to acquire and deliver certain water supplies, on an ongoing basis, to CVPIA refuges. These specific obligations can only be “met” when Reclamation successfully secures and delivers reliable water supplies of suitable quality to refuges. Interrupting Reclamation’s ongoing efforts to do so would jeopardize the gains that have been made since the enactment of the CVPIA.

2. The bill would add an entirely new purpose to the CVPIA in Section 3402: “to ensure that water dedicated to fish and wildlife purposes by this title is replaced and provided to [CVP] water contractors by December 31, 2016, at the lowest cost reasonably achievable.” To achieve this new purpose, Section 3408(j) would be amended to require that Reclamation quickly develop a plan to replace all CVPIA water dedicated to fish and wildlife purposes, and to use that new water to meet other CVP obligations (i.e. “contractual obligations”). If Reclamation fails to physically secure 800,000 acre-feet annually (afa) of this “new” CVP water by 2016, that amount would be taken away from fish and wildlife under the CVPIA, and implementation of Section 3406(b)(2) would be suspended. It is entirely impractical to expect Reclamation to develop 800,000 afa of new California water supplies to serve CVP agricultural and urban contractors in such a short timeframe. Reclamation is now unable to meet its minimal statutory obligation to provide full “Level 4” water supplies to CVPIA refuges. Adding a new imperative for Reclamation to “find” more water for non-refuge purposes would place a significant burden on Reclamation’s refuge water supply program and would make achieving full Level 4 supplies even less likely.
3. The bill would repeal and replace Section 3404 of the CVPIA, such that Reclamation would no longer be prohibited from executing new CVP contracts prior to meeting its fish and wildlife restoration obligations. Section 3404 now prohibits Reclamation from executing new CVP water supply contracts until the provisions of Sections 3406 (b) through (d) are satisfied, including the requirement to obtain and deliver Level 2 and Level 4 water supplies to refuges. The CVP’s water supplies are already over-allocated. Reclamation should not be allowed to execute new CVP water service contracts until it can meet its existing statutory and contractual obligations to deliver needed supplies to refuge contractors.

4. In one of several provisions targeting the CVPIA "Restoration Fund," H.R. 1837 would amend CVPIA Section 3607(d)(2) by setting a drop-dead 2020 date when payments into the Restoration Fund would be cut almost in half. This section currently requires Reclamation to satisfy its fish and wildlife obligations under Section 3406 before it reduces collections for the Fund, which provides a statutory incentive for Reclamation to meet its obligations quickly and efficiently. Replacing this incentive with an arbitrary date will take away this incentive and will do nothing more than impede Reclamation's progress toward compliance. Those who pay into the Restoration Fund should encourage Reclamation to use the Fund to satisfy its CVPIA obligations, rather than trying to change those obligations to the detriment of CVPIA refuges.
5. The bill deletes the current requirement in CVPIA Section 3407(a) to use most of the Restoration Fund (67%) for habitat and restoration purposes, and the remaining portion (33%) for fish and wildlife-specific projects. The entire purpose of the Fund is to mitigate for the vast losses to fish and wildlife habitat caused by the CVP. Reclamation should not be given discretion to use the Fund for purposes that the Fund was not established or intended to serve.
6. H.R. 1837 also appears to limit some of the sources of funding for the CVP Restoration Fund, which hurts refuges that depend on that Fund for their water supply acquisition, and the agricultural districts that incur wheeling costs in delivering refuge water supplies (costs that are paid for from the Fund). Existing demands on the Fund have already stretched it beyond its ability to keep up with both agricultural and refuge needs. H.R. 1837 would amend CVPIA Section 3407 to prohibit the collection of Restoration Fund payments from those who convey non-CVP water through CVP facilities, who receive deliveries of temporary CVP flood flows ("section 215 water"), and who receive CVP water for purposes of groundwater recharge. At the same time, the bill would amend CVPIA Section 3408 by directing Reclamation to encourage and facilitate those same types of uses. Creating an exemption from payment into the Restoration Fund for certain classes of water users that benefit from the CVP, at the expense of those who do pay into the Fund, is inequitable to all CVP users.

7. H.R. Section 1837 would amend CVPIA Section 3405(f) so that only revenues “that exceed the cost of service rates” applicable to the delivery of water being transferred from agricultural to urban use would go to the Restoration Fund. This will result in less money being dedicated to the Fund, to the detriment to wildlife refuges.
8. H.R. 1837 would add a new subsection to the CVPIA, Section 3407(h), creating a “Restoration Fund Advisory Board.” At least ten of the twelve Board members would be agricultural, urban or power customers of the CVP. The Board would make recommendations directly to the Secretary of the Interior on how to administer the Fund, but the Board would not represent refuge or wildlife interests and would not expressly be subject to public transparency requirements. In conjunction with the other blows dealt to the Restoration Fund by H.R. 1837, this one could be fatal.
9. H.R. 1837 would amend CVPIA Section 3406 so that to the “fullest extent possible” the 800,000 afa now dedicated to fish and wildlife under subsection (b)(2) must be “reused” to fulfill Reclamation’s contractual obligations to “agricultural and M&I water users.” This ignores Reclamation’s statutory and contractual obligations to refuge contractors. Reclamation should be able to reuse (b)(2) water for purposes of serving *any* CVP contractor to whom it owes water, including refuge contractors.
10. CVPIA Section 3405 would be amended so that Reclamation could not impose “mitigation or other requirements” on CVP water transfers. Notwithstanding the vagueness of this language and the legal uncertainty of how it would interact with a number of other statutes, this amendment could undermine the ability of the CVP to serve its contractors. There is increasing pressure to allow CVP water transfers to non-CVP contractors, and the proposed language should be of concern to all CVP water users.
11. The bill would amend CVPIA Section 3405(d)(4) so that Reclamation would no longer be able to waive or reduce water charges for contractors who grow crops that provide “significant and quantifiable” habitat value for waterfowl. It is hard to understand the rationale for removing this provision of the CVPIA, which requires binding agreements to assure that significant habitat value will in fact be provided and serves both agricultural and wildlife interests.

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12. Section 3406(b)(2) of the CVPIA would be amended to remove the designation of fish, wildlife, and habitat restoration as the "primary purpose" for which Reclamation uses the 800,000 afa of CVPIA water dedicated by subsection (b)(2). In addition, any use of water to meet Delta water quality standards or Endangered Species Act (ESA) requirements would necessarily be credited against those (b)(2) supplies. This amendment would overturn judicial precedent recognizing that Reclamation has discretion to avoid relegating the fish and wildlife restoration mandates of the CVPIA "to a secondary role, or perhaps no role at all."¹ The amendment would almost certainly lead to just this result since, as a practical matter, most if not all of these (b)(2) flows would be dedicated to the secondary purposes of the CVPIA rather than the primary purpose of fish and wildlife restoration.

Thank you for your consideration of these comments. The GWD and GRCD welcome the opportunity to provide further information about these issues to your committee and we will continue to work with other stakeholders to lessen impacts to agriculture while preserving the refuge water supply provisions of the CVPIA.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ricardo Ortega', with a stylized flourish at the end.

Ricardo Ortega
General Manager

¹ E.g. *San Luis & Delta-Mendota Water Auth. v. U.S. Dept. of Interior*, 637 F. Supp. 2d 777, 795 (E.D. Cal. 2008) (and cited case).

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cc:

Rep. Tom McClintock

Rep. Grace Napolitano

Rep. John Garamendi

Rep. Jim Costa

Rep. Dennis Cardoza

Rep. Louie Gohmert

Rep. Jeff Denham

Rep. Scott Tipton

Rep. Paul Gosar

Rep. Raul Labrador

Rep. Kristi Noem

Rep. Raul Grijalva

Rep. Ben Lujan

Rep. Doc Hastings

Rep. Ed Markey

Rep. Devin Nunes

Rep. George Miller

Attachment

1124-631j

ATTACHMENT

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ADAMS BROADWELL JOSEPH CARDOZO PC

June 27, 2011

The Honorable Tom McClintock
Chairman, Subcommittee on Water and Power
Committee on Natural Resources
U.S. House of Representatives
Washington, DC 20515

The Honorable Grace Napolitano
Ranking Minority Member, Subcommittee on Water and Power
Committee on Natural Resources
U.S. House of Representatives
Washington, DC 20515

RE: Grassland Water District Comments on HR 1837 (Nunes)

Dear Representative McClintock and Representative Napolitano:

Thank you for the opportunity to provide comments on HR 1837, the San Joaquin Valley Water Reliability Act. Please include this letter in the official record of the Subcommittee's recent hearings on this proposed legislation.

The Grassland Water District (GWD) and Grassland Resource Conservation District (GRCD) are the largest component of the Grassland Ecological Area (Grasslands). Including nearly 200,000 acres and more than 300 square miles, Grasslands is the largest contiguous freshwater wetland complex west of the Rocky Mountains and hosts millions of migratory birds each year and a diverse resident population of wildlife including many which are listed as threatened or endangered. This vast area is located in western Merced County and is comprised of private, state, and federally owned wetland areas, all of which maintain long-term federal water contracts similar to those contracts held by many agriculturally-based water districts and other customers of the Central Valley Project (CVP). These water supplies were provided to

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these wetland areas under the authorities of the Central Valley Project Improvement Act (CVPIA) for the specific purpose of mitigating for the wetland impacts associated with the initial construction of the CVP and the elimination of much of the natural hydrology that once flooded these wetlands seasonally. As more than 90% of California's wetlands have been destroyed over the last one hundred and fifty years, it is critical that the few wetlands that do remain be intensively managed annually to help mimic what Mother Nature provided historically on a larger yet more intermittent scale.

Federal law and federal water contracts establish a two-tier system for refuge water supplies, identified in the law as Level 2 and Level 4, all of which Congress has required to be provided to these protected wetlands. The total amount of CVP water required to be provided to these designated refuge areas is a tiny fraction of the CVP's total yield and its total contract allocations, yet federal officials have failed to carry out this congressional mandate. This is supported by data from the Congressional Research Service (2009), which clearly shows that refuge water supplies represent a mere 12% of CVP water supplies while agriculture and urban needs utilize 88% percent of CVP yield. Nonetheless, we are sympathetic to many of agriculture's concerns related to water supply reliability—an issue refuges share with agriculture. As a result, we have developed a much closer relationship with many of our agricultural neighbors in recent years.

During your hearings on this legislation, testimony was provided that invoked refuge water supplies in previous years and a comparison to the amounts of water being provided to certain types of agricultural water contractors, especially the amounts provided in recent years. Specifically, it has been inaccurately stated that refuges have received 100% water supplies while federal water contractors have received significantly less. To the contrary, refuges received roughly 36% of their full spring/summer supplies between 2006 and 2010, and in the case of the GRCD, that percentage has been even less as the private wetlands identified in the CVPIA are at a significantly lower supply than many of the other state and federal refuges which receive federal water through the CVPIA.

Moreover, unlike agricultural and urban contractors, refuges generally do not have access to the same privileges as many other water contractors, such as preferred access to carryover storage and rescheduled water; supplemental groundwater supplies; the ability to acquire water on the private market to make up their shortages (refuges are reliant on the Department of the Interior to fund and deliver wetland water supplies through the CVP Restoration Fund); and conveyance priority through the Delta. Those differences between refuges and other types of

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water contractors make any comparison between refuge supply percentages and agricultural or urban supplies “apples to oranges”, as refuges have little to no ability to supplement their supplies beyond their contractual amounts. Whereas some other types of contractors may only receive 50% of their supply, or less, in a given year they are oftentimes able to supplement that shortfall from other sources. In contrast, when refuges receive 50% of their irrigation water, they are truly at 50%. This seems to be a point that has been repeatedly missed during the discussion surrounding this legislation.

While we appreciate the fact that HR 1837 and its sponsors do appear to recognize that refuges share many of the same hydrologic challenges that agricultural and urban contractors face, based on the fact that the refuge provisions of federal law were not targeted as directly in the legislation, we remain concerned about a number of potentially indirect impacts on refuges from the bill. Specifically, we have a number of questions and concerns about how the legislation impacts an already oversubscribed Restoration Fund, as well as the question of who is placed in control over the Fund and subsequent prioritization of funding distribution.

We identify below some key issues within the legislation that raise questions about not only funding for future refuge water acquisition, but also the reliability of future funding for programs that are also important to agriculture, such as Level 2 diversification:

1. HR 1837 appears to limit some of the sources of funding to the CVP Restoration Fund, which hurts refuges that depend on that Fund for their water supplies, as well as certain agricultural districts which incur wheeling costs in delivering refuge water supplies that are also paid for from the Fund. Existing demands on the Fund have already stretched it beyond its ability to keep up with both agricultural and refuge needs.
2. HR 1837 broadens the range of activities that can be funded by the Fund, which could also limit refuge water acquisition funding and even impact existing and ongoing programs important to agriculture, including Level 2 diversification, wheeling costs, etc. Specifically, it appears HR1837 could allow all of the money in the Fund to be used to develop water supplies for agricultural districts to “make up” for water that had been used previously for fish or wildlife, which could potentially eliminate all funding for refuges over time. In fact, the water supply make-up requirement is given a new “priority” in HR 1837, making it likely that it would cause yet another significant drain of most of the Restoration Fund monies.
3. HR 1837 deletes the current requirement to use most of the Fund for habitat and restoration purposes, which could also impact refuges. All limits on use of the Fund are eliminated except that 50% of the money must benefit the CVP Division from which the

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money was collected. While there may be some benefits of that proposal to south of Delta refuges, no thorough analysis of the potential benefits or impacts of this change has been conducted. We have asked Interior and Reclamation staff to conduct such an analysis yet as far as we are aware no such analysis has yet been provided. In fairness, we recognize the legislation could potentially increase south of Delta water deliveries and therefore increase Restoration Fund collections, yet other aspects of the HR 1837 seem to undercut or foreclose those potential benefits by changing how the Fund's collections are controlled and distributed.

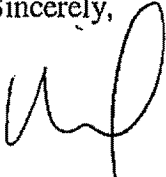
4. HR 1837 requires a new "Advisory Board" for the Restoration Fund and ten of the twelve members must be from agricultural, urban or power customers of the CVP. This new Board, which seems to be exempt from the public participation and transparency requirements of current federal law (i.e. FACA) can make recommendations directly to the Secretary on how to administer the Fund. We also maintain little faith that the two unspecified seats on the board would reliably and consistently represent refuge or wildlife interests as there is no requirement in the legislation to mandate those seats be reserved for that purpose, or that Interior would undergo the selection process with the necessary open public input.
5. While not entirely clear, it seems HR 1837 provides that all water provided to wildlife must be "made up" to CVP contractors by 2016, which places a new, significant burden on Interior's refuge program and makes full Level 4 supplies even less likely.
6. The legislation makes a new pronouncement that merely "pursuing" the programs in CVPIA is all that is needed for Interior to have fully met the fish and wildlife purposes of the CVP (including the restoration goals added by the CVPIA itself). This would likely weaken and undermine Level 4 obligations in CVPIA by providing that any level of Interior "effort", be it modest or even minimal, would be enough that the restoration objectives of CVPIA would be declared to have been met. It is important to recognize there is no "day" which CVPIA envisioned refuges being "complete" with the responsibilities they maintain. While that may or may not be the case with other aspects of CVPIA, it was the annual delivery of reliable water supplies of suitable quality that allowed refuges to make the historic gains they have witnessed since the CVPIA's passage. Any interruption in that, or reduction in funding to maintain that mitigation requirement, would effectively and summarily terminate the benefits of CVPIA to refuges just as quickly as we began to see benefits of the CVPIA to the refuges following its first year of implementation.

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Thank you for your consideration of our questions and comments. The GWD and GRCD welcome the opportunity to provide further information about these issues to your committee and we will continue to work with other stakeholders to lessen impacts to agriculture while preserving the refuge water supply provisions of the CVPIA.

Sincerely,

A handwritten signature in black ink, appearing to read 'DWidell', with a large loop at the end.

David L. Widell
General Manager

Cc: Rep. Doc Hastings, Committee Chairman
Rep. Ed Markey
Rep. John Garamendi
Rep. Jim Costa
Rep. Dennis Cardoza
Rep. Louie Gohmert
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